



OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF RIVERSIDE

MICHAEL A. HESTRIN
DISTRICT ATTORNEY

July 11, 2019

Dan Rubins

76603-14975770@requests.muckrock.com

Subject: California Public Records Act Request

Dear Mr. Rubins:

On July 5, 2019, our office received an email in which you requested:

[A]ll "Brady lists," Giglio lists, "potential impeachment disclosure lists," or any similar compiled records or lists of records of the type set forth in California Penal Code § 832.7(b)(1)(C).

The lists you seek in your request are exempt from production under the California Public Records Act (CPRA) and therefore we will not provide them to you.

First, it is important to note that a "Brady List" is not the type of record covered by California Penal Code section 832.7, subdivision (b)(1)(C). Following the passage of Senate Bill 1421, the CPRA now requires law enforcement agencies to disclose:

Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence.

(Pen. Code, § 832.7, subd. (b)(1)(C).)

The code defines a “sustained finding” as:

[A] final determination by an investigating agency, commission, board, hearing officer, or arbitrator, as applicable, following an investigation and opportunity for an administrative appeal pursuant to Sections 3304 and 3304.5 of the Government Code, that the actions of the peace officer or custodial officer were found to violate law or department policy.

(Pen. Code, § 832.8, subd. (b).)

The statute further dictates the types of records that are to be disclosed. They include:

[A]ll investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

(Pen. Code, § 832.7, subd. (b)(2).)

While 832.7 removed confidentiality for certain personnel records that involve a “sustained finding” of dishonesty or sexual assault, a District Attorney’s “Brady List” is not a “sustained finding” of any misconduct as defined by Penal Code section 832.8, subdivision (b). A “Brady List” is merely a method of complying with the prosecution’s broad criminal discovery obligations regarding *possible* impeachment information as defined by *Brady v. Maryland* (1963) 373 U.S. 83, Penal Code section 1054.1 et seq., applicable case law, and the state bar rules. No “final determination by an investigating agency” is required, nor is there any opportunity for an officer to pursue an

“administrative appeal pursuant to Sections 3304 and 3304.5 of the Government Code.” In short, a “Brady List” is not the type of record covered by the new law.

Any “Brady List” also remains exempt from disclosure under several recognized CPRA exemptions. First, Government Code section 6254, subdivision (f), exempts from production “any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes.” This exemption applies to District Attorney files and continues to apply even if the investigation is closed. (*Williams v. Superior Court* (1993) 5 Cal.4th 337, 351, 354, 362 and *Rivero v. Superior Court* (1997) 54 Cal.App.4th 1048, 1059.) To fall under this exemption, investigatory records need not be maintained in specific case files; rather, the question is whether a particular record “relate[s] to the investigation” in question. (*Commission on Peace Officer Standards and Training v. Superior Court* (2007) 42 Cal.4th 278, 291, citing *Williams v. Superior Court*, *supra*, at p. 355; *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, 1293.) The records you request fall under this exemption.

Second, a “Brady List” is also exempt from production under Government Code section 6254, subdivision (k), as releasing the records would violate other provisions of law, specifically, Penal Code sections 832.7 & 832.8 [continued confidentiality of peace officer personnel records outside of limited categories], 1054.6 [attorney work product], Code of Civil Procedure section 2018.30 [attorney work product], and Evidence Code section 1040 [official information]. (*Commission on Peace Officer Standards and Training v. Superior Court*, *supra*, 42 Cal.4th at p. 289 [confidential nature of peace officer personnel records applies to any “information obtained from those records”]; *Dowden v. Superior Court* (1999) 73 Cal.App.4th 126, 128-135 [attorney work product]; *Fellows v. Superior Court (Los Angeles County)* (1980) 108 Cal.App.3d 55, 63 [same].)

Finally, a “Brady List” is exempt under Government Code section 6255, as the public’s interest in non-disclosure clearly outweighs the public’s interest in disclosure, given the exposure of confidential and sensitive peace-officer information to potential future offenders and the intrusion into the legally-protected privacy rights of peace officers. (Gov. Code, § 6255; *Los Angeles School District v. Superior Court* (2014) 228 Cal.App.4th 222, 239-256; *Wilson v. Superior Court* (1997) 51 Cal.App.4th 1136, 1139-43; *Eskaton Monterey Hospital v. Meyers* (1982) 134 Cal.App.3d 788 [no public interest in disclosing information that may assist violators in evading detection].)

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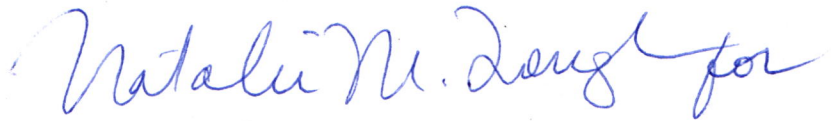
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The District Attorney's Office takes seriously its responsibilities under the CPRA. If our Office can be of any further information or assistance to you, please do not hesitate to contact us.

Very truly yours,

MICHAEL A. HESTRIN
District Attorney



GARY S. ROTH
Deputy District Attorney